

**ASSEMBLY BILL**

**No. 2117**

**Introduced by Assembly Members Goldberg and Coto**

February 17, 2006

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An act to amend Section 313 and 60200 of, and to add Section 322 to, the Education Code, relating to English language learners.

LEGISLATIVE COUNSEL'S DIGEST

AB 2117, as introduced, Goldberg. English language learners: waivers.

(1) Existing law, Proposition 227, an initiative statute approved by the voters at the June 2, 1998, statewide primary election, requires the state to encourage family members and others to provide personal English language tutoring to pupils coming from backgrounds of limited English proficiency. Existing law requires a school district that has one or more pupils who are English learners to assess each pupil's English language development in order to determine the level of proficiency for these purposes. Existing law requires the State Department of Education, with the approval of the State Board of Education, to establish procedures for conducting the specified assessment and for the reclassification of a pupil from English learner to proficient in English. Existing law requires the reclassification procedures developed by the department to utilize multiple criteria in determining whether to reclassify a pupil as proficient in English, including several listed assessment criteria.

This bill would include, within the listed assessment criteria, assessment of academic proficiency using a primary language assessment instrument under the Standardized Testing and Reporting (STAR) Program, if that assessment instrument is available.

(2) Existing law requires all pupils in California public schools to be taught English by being taught in English language classrooms, except as specified. Existing law authorizes this requirement to be waived with the prior written informed consent, to be provided annually, of the pupil's parents or legal guardian under certain, specified circumstances. "Informed consent," for these purposes, requires that the parents or legal guardian personally visit the school to apply for the waiver and that they there be provided a full description of the educational materials to be used in the different educational program choices and all the educational opportunities available to the pupil. Under these parental waiver conditions, a pupil may be transferred to classes where he or she is taught English and other subjects through bilingual education techniques or other generally recognized educational methodologies permitted by law. Individual schools in which 20 pupils or more of a given grade level receive a waiver are required to offer those classes or allow the pupil to transfer to a public school in which those classes are offered.

This bill would require a school district that has one or more pupils who are English language learners to inform in writing the parent or legal guardian of each of those pupils that the parent or legal guardian has the right to request the waiver described above. Because this requirement would impose additional duties upon school districts, the bill would establish a state-mandated local program.

The bill would provide that if a pupil's parent or legal guardian has been denied the option of requesting the specified waiver, or has been provided with false or misleading information relating to the right to request the waiver, that parent or legal guardian shall have legal standing to sue for enforcement of the waiver provisions, and if successful shall be awarded normal and customary attorney's fees and actual damages, but not punitive or consequential damages. The bill would provide that a school board member or other elected official or public school teacher or administrator who willfully and repeatedly refuses to implement the waiver provisions by failing to inform parents or legal guardians regarding their rights under those provisions, or by providing false or misleading information regarding those rights, may be held personally liable for fees and actual damages by a pupil's parent or legal guardian.

The bill would make it an infraction, punishable by specified fines, for a school board member or other elected official or public school teacher or administrator to refuse to implement the waiver provisions

by willfully failing to inform parents or legal guardians regarding their rights under those provisions, or by willfully providing false or misleading information regarding those rights. The bill would establish a state-mandated local program by creating a new infraction.

(3) Existing law requires the state board to adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for school district governing boards. Existing law requires the state board to adopt at least 5 basic instructional materials for all applicable grade levels in the categories of language arts, including spelling and reading; mathematics; science; social science; and bilingual or bicultural subjects.

This bill would delete the requirement that the state board adopt basic instructional materials in the category of bilingual or bicultural subjects and, instead, would require the state board to adopt basic instructional materials in the category of English language development.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 313 of the Education Code is amended
- 2 to read:
- 3 313. (a) ~~Each~~ A school district that has one or more pupils
- 4 who are English learners shall assess each pupil's English
- 5 language development in order to determine the level of
- 6 proficiency for the purposes of this chapter.
- 7 (b) ~~The State Department of Education~~ *department*, with the
- 8 approval of the ~~State Board of Education~~ *state board*, shall
- 9 establish procedures for conducting the assessment required

1 pursuant to subdivision (a) and for the reclassification of a pupil  
2 from English learner to proficient in English.

3 (c) Commencing with the 2000–01 school year, the  
4 assessment shall be conducted upon initial enrollment, and  
5 annually, thereafter, during a period of time determined by the  
6 ~~Superintendent of Public Instruction and the State Board of~~  
7 ~~Education~~ *state board*. The annual assessments shall continue  
8 until the pupil is redesignated as English proficient. The  
9 assessment shall primarily utilize the English language  
10 development test identified or developed by the Superintendent  
11 ~~of Public Instruction~~ pursuant to Chapter 7 (commencing with  
12 Section 60810) of Part 33. Prior to completion of the English  
13 language development test, a school district shall use either an  
14 assessment instrument developed by the school district or an  
15 assessment recommended by the ~~State Department of Education~~  
16 *department*.

17 (d) The reclassification procedures developed by the ~~State~~  
18 ~~Department of Education~~ *department* shall utilize multiple  
19 criteria in determining whether to reclassify a pupil as proficient  
20 in English, including, but not limited to, all of the following:

21 (1) Assessment of language proficiency using an objective  
22 assessment instrument, including, but not limited to, the English  
23 language development test pursuant to Section 60810.

24 (2) Teacher evaluation, including, but not limited to, a review  
25 of the pupil's curriculum mastery.

26 (3) Parental opinion and consultation.

27 (4) Comparison of the pupil's performance in basic skills  
28 against an empirically established range of performance in basic  
29 skills based upon the performance of English proficient pupils of  
30 the same age, that demonstrates whether the pupil is sufficiently  
31 proficient in English to participate effectively in a curriculum  
32 designed for pupils of the same age whose native language is  
33 English.

34 (5) *Assessment of academic proficiency using a primary*  
35 *language assessment instrument under Section 60640, if that*  
36 *assessment instrument is available.*

37 (e) It is the intent of the Legislature that nothing in this section  
38 preclude a school district or county office of education from  
39 testing English language learners more than once in a school year

1 if the school district or county office of education chooses to do  
2 so.

3 SEC. 2. Section 322 is added to the Education Code, to read:

4 322. (a) A school district that has one or more pupils who are  
5 English language learners shall inform in writing the parent or  
6 legal guardian of each of those pupils that the parent or legal  
7 guardian has the right to request a waiver of Section 310 under  
8 Sections 310 and 311.

9 (b) (1) If a pupil's parent or legal guardian has been denied  
10 the right to request the waiver described in subdivision (a), or has  
11 been provided with false or misleading information relating to  
12 the right to request the waiver, that parent or legal guardian shall  
13 have legal standing to sue for enforcement of right specified in  
14 Sections 310 and 311, and if successful shall be awarded  
15 reasonable attorney's fees and actual damages, but not punitive  
16 or consequential damages.

17 (2) A school board member or other elected official or public  
18 school teacher or administrator who willfully and repeatedly  
19 refuses to implement the terms of subdivision (a) or Sections 310  
20 and 311 by failing to inform parents or legal guardians regarding  
21 their rights under those provisions, or by providing false or  
22 misleading information regarding those rights, is personally  
23 liable for attorney fees and actual damages incurred by a pupil's  
24 parent or legal guardian.

25 (c) A school board member or other elected official or public  
26 school teacher or administrator who refuses to implement the  
27 terms of subdivision (a) or Sections 310 and 311 by willfully  
28 failing to inform parents or legal guardians regarding their rights  
29 under those provisions, or by willfully providing false or  
30 misleading information regarding those rights, is guilty of an  
31 infraction, punishable as follows:

32 (1) By a fine of not more than one hundred dollars (\$100) for  
33 a first offense.

34 (2) By a fine of not more than two hundred dollars (\$200) for  
35 a second offense that occurs within one year after a conviction of  
36 a first offense.

37 (3) By a fine of not more than four hundred dollars (\$400) for  
38 a third or each subsequent offense that occurs within one year  
39 after a conviction of a second or subsequent offense.

SEC. 3. Section 60200 of the Education Code is amended to read:

60200. The state board shall adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for governing boards, subject to the following provisions:

(a) The state board shall adopt at least five basic instructional materials for all applicable grade levels in each of the following categories:

(1) Language arts, including, but not limited to, spelling and reading.

(2) Mathematics.

(3) Science.

(4) Social science.

~~(5) Bilingual or bicultural subjects~~ *English language development.*

(6) Any other subject, discipline, or interdisciplinary areas for which the state board determines the adoption of instructional materials to be necessary or desirable.

(b) The state board shall adopt procedures for the submission of basic instructional materials in order to comply with each of the following:

(1) Instructional materials may be submitted for adoption in any of the subject areas pursuant to paragraphs (1) to (5), inclusive, of subdivision (a) not less than two times every six years and in any of the subject areas pursuant to paragraph (6) of subdivision (a) not less than two times every eight years. The state board shall ensure that curriculum frameworks are reviewed and adopted in each subject area consistent with the six- and eight-year submission cycles and that the criteria for evaluating instructional materials developed pursuant to subdivision (b) of Section 60204 are consistent with subdivision (c). The state board may prescribe reasonable conditions to restrict the resubmission of materials that have been previously rejected if those resubmitted materials have no substantive changes.

(2) Submitted instructional materials shall be adopted or rejected within six months of the submission date of the materials pursuant to paragraph (1), unless the state board determines that a longer period of time, not to exceed an additional three months, is necessary due to the estimated volume or complexity of the

1 materials for that subject in that year, or due to other  
2 circumstances beyond the reasonable control of the state board.

3 (c) In reviewing and adopting or recommending for adoption  
4 submitted basic instructional materials, the state board shall use  
5 the following criteria, and ensure that, in its judgment, the  
6 submitted basic instructional materials meet all of the following  
7 criteria:

8 (1) Are consistent with the criteria and the standards of quality  
9 prescribed in the state board's adopted curriculum framework. In  
10 making this determination, the state board shall consider both the  
11 framework and the submitted instructional materials as a whole.

12 (2) Comply with the requirements of Sections 60040, 60041,  
13 60042, 60043, 60044, 60048, 60200.5, and 60200.6, and the state  
14 board's guidelines for social content.

15 (3) Are factually accurate and incorporate principles of  
16 instruction reflective of current and confirmed research.

17 (4) Adequately cover the subject area for the grade level or  
18 levels for which they are submitted.

19 (5) Do not contain materials, including illustrations, that  
20 provide unnecessary exposure to a commercial brand name,  
21 product, or corporate or company logo. Materials, including  
22 illustrations, that contain a commercial brand name, product, or  
23 corporate or company logo may not be used unless the board  
24 determines that the use of the commercial brand name, product,  
25 or corporate or company logo is appropriate based on one of the  
26 following specific findings:

27 (A) If text, the use of the commercial brand name, product, or  
28 corporate or company logo in the instructional materials is  
29 necessary for an educational purpose, as defined in the guidelines  
30 or frameworks adopted by the State Board of Education.

31 (B) If an illustration, the appearance of a commercial brand  
32 name, product, or corporate or company logo in an illustration in  
33 instructional materials is incidental to the general nature of the  
34 illustration.

35 (6) Meet other criteria as are established by the state board as  
36 being necessary to accomplish the intent of Section 7.5 of Article  
37 IX of the California Constitution and of Section 1 of ~~this act~~  
38 *Chapter 1181 of the Statutes of 1989*, provided that the criteria  
39 are approved by resolution at the time the resolution adopting the  
40 framework for the current adoption is approved, or at least 30

1 months prior to the date that the materials are to be approved for  
2 adoption.

3 (d) If basic instructional materials are rejected, the state board  
4 shall provide a specific, written explanation of the reasons why  
5 the submitted materials were not adopted, based upon one or  
6 more of the criteria established under subdivision (c). In  
7 providing this explanation, the state board may use, in whole or  
8 in part, materials written by the commission or any other advisers  
9 to the state board.

10 (e) The state board may adopt fewer than five basic  
11 instructional materials in each subject area for each grade level if  
12 either of the following occurs:

13 (1) Fewer than five basic instructional materials are submitted.

14 (2) The state board specifically finds that fewer than five basic  
15 instructional materials meet the criteria prescribed by paragraphs  
16 (1) to (5), inclusive, of subdivision (c), or the materials fail to  
17 meet the state board's adopted curriculum framework. If the state  
18 board adopts fewer than five basic instructional materials in any  
19 subject for any grade level, the state board shall conduct a review  
20 of the degree to which the criteria and procedures used to  
21 evaluate the submitted materials for that adoption were consistent  
22 with the state board's adopted curriculum framework.

23 (f) ~~Nothing in this~~ *This section shall does not* limit the  
24 authority of the state board to adopt materials that are not basic  
25 instructional materials.

26 (g) ~~If a district board~~ *the governing board of a school district*  
27 establishes to the satisfaction of the state board that the  
28 state-adopted instructional materials do not promote the  
29 maximum efficiency of pupil learning in the *school* district, the  
30 state board shall authorize that ~~district~~ governing board to use its  
31 instructional materials allowances to purchase materials as  
32 specified by the state board, in accordance with standards and  
33 procedures established by the state board.

34 (h) Consistent with the quality criteria for the state board's  
35 adopted curriculum framework, the state board shall prescribe  
36 procedures to provide the most open and flexible materials  
37 submission system and ensure that the adopted materials in each  
38 subject, taken as a whole, provide for the educational needs of  
39 the diverse pupil populations in the public schools, provide  
40 collections of instructional materials that illustrate diverse points

1 of view, represent cultural pluralism, and provide a broad  
2 spectrum of knowledge, information, and technology-based  
3 materials to meet the goals of the program and the needs of  
4 pupils.

5 (i) Upon making an adoption, the state board shall make  
6 available to listed publishers and manufacturers and all school  
7 interests a listing of instructional materials, including the most  
8 current unit cost of those materials as computed pursuant to  
9 existing law. Items placed upon lists shall remain thereon, and be  
10 available for procurement through the state's systems of  
11 financing, from the date of the adoption of the item and until a  
12 date established by the state board. The date established by the  
13 board for continuing items on that list shall be the earlier of not  
14 more than six years from the date of adoption for instructional  
15 materials pertaining to subject areas designated in paragraphs (1)  
16 to (5), inclusive, of subdivision (a), and not more than eight years  
17 from the date of adoption for instructional materials pertaining to  
18 subject areas designated in paragraph (6) of subdivision (a), or  
19 the date on which the state board adopts instructional materials  
20 based upon a new or revised curriculum framework. Lists of  
21 adopted materials shall be made available by subject and grade  
22 level. The lists shall terminate and shall no longer be effective on  
23 the date prescribed by the state board pursuant to this  
24 subdivision.

25 (j) The state board may approve multiple lists of instructional  
26 materials, without designating a grade or subject, and the state  
27 board may designate more than one grade or subject whenever it  
28 determines that a single subject designation or a single grade  
29 designation would not promote the maximum efficiency of pupil  
30 learning. Any materials so designated may be placed on single  
31 grade or single subject lists, or multigrade or interdisciplinary  
32 lists, or may be placed on separate lists including other materials  
33 with similar grade or subject designations.

34 (k) A composite listing in the format of an order form may be  
35 used to meet the requirements of this section.

36 (l) The lists maintained pursuant to this section shall not be  
37 deemed to control the use period by any local district.

38 (m) The state board shall give publishers the opportunity to  
39 modify instructional materials, in a manner provided for in  
40 regulations adopted by the state board, if the state board finds

1 that the instructional materials do not comply with paragraph (5)  
2 of subdivision (c).

3 (n) ~~Nothing in this~~ *This section shall be construed to does not*  
4 prohibit the publisher of instructional materials from including  
5 whatever corporate name or logo on the instructional materials  
6 that is necessary to provide basic information about the  
7 publisher, to protect its copyright, or to identify third party  
8 sources of content.

9 (o) The state board may adopt regulations that provide for  
10 other exceptions to this section, as determined by the board.

11 (p) ~~The Superintendent of Public Instruction shall develop,~~  
12 ~~and the State Board of Education~~ *state board* shall adopt,  
13 guidelines to implement this section.

14 SEC. 4. No reimbursement is required by this act pursuant to  
15 Section 6 of Article XIII B of the California Constitution for  
16 certain costs that may be incurred by a local agency or school  
17 district because, in that regard, this act creates a new crime or  
18 infraction, eliminates a crime or infraction, or changes the  
19 penalty for a crime or infraction, within the meaning of Section  
20 17556 of the Government Code, or changes the definition of a  
21 crime within the meaning of Section 6 of Article XIII B of the  
22 California Constitution.

23 However, if the Commission on State Mandates determines  
24 that this act contains other costs mandated by the state,  
25 reimbursement to local agencies and school districts for those  
26 costs shall be made pursuant to Part 7 (commencing with Section  
27 17500) of Division 4 of Title 2 of the Government Code.